

Docket No.: 1380-0231PUS1
(Patent)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patent Application of:

Juan Carlos Lopez CALVET et
al.

Before the Board of Appeals

Application No.: 10/594,559

Confirmation No.: 3554

Filed: January 19, 2007

Art Unit: 2617

For: SUBSCRIBER IDENTITY MODULE

Examiner: J. GAO

APPEAL BRIEF

MS APPEAL BRIEF-PATENTS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Appeal Brief is in furtherance of the Notice of Appeal filed in this case on .

This brief contains items under the following headings as required by 37 C.F.R. § 41.37 and M.P.E.P. § 1206:

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APPEAL BRIEF ON BEHALF OF APPELLANT

MS APPEAL BRIEF-PATENTS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

I. REAL PARTY IN INTEREST

The real party in interest for this application is the Assignee, TELENOR ASA.

II. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences that will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

III. STATUS OF CLAIMS

A. Total Number of Claims in Application

There are 19 claims pending in application.

B. Current Status of Claims

1. Claims canceled: N/A
2. Claims withdrawn from consideration but not canceled: N/A
3. Claims pending: 1-19
4. Claims allowed: N/A
5. Claims rejected: 1-19

C. Claims on Appeal

The claims on appeal are claims 1-19.

IV. STATUS OF AMENDMENTS

No amendments have been presented after the Final Rejection of March 05, 2010.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER

The invention of independent claim 1 is directed to Subscriber identity module (SIM) (see element 100 of Fig. 1) for a mobile communication terminal 300 (see Fig. 3; page 5, lines 27-28). The SIM includes a processing device 110, a memory device 120, an I/O device 130 and a wireless communication device 140 which is connected to an antenna 150 included in the SIM 100 (see page 3, lines 16-26; Fig. 1). The wireless communication device 140 is an interrogatable transponder (see page 3, lines 25-26), operatively controllable by the processing device 110 and arranged to be operatively enabled or disabled, controlled by a signal provided by the mobile communication terminal 300 via the I/O device 130 (see page 3, lines 27-34).

The claimed invention of independent 18 is directed to a method (see Fig. 4) for execution by a SIM 100, for the purpose of providing secure data communication between the SIM 100 and an external interrogating device (RFID reader) (see page 6, line 9) wherein the SIM 100 includes a processing device 110, a memory device 120 containing a private key (see page 6, line 26), an I/O device 130, and a wireless communication device 140 which is connected to an antenna 150 included in the SIM 100 (see page 3, lines 16-26; Fig. 1), the wireless communication device being an interrogatable transponder (see page 3, lines 25-26), operatively controllable by the processing device 110 and arranged to be operatively enabled or disabled, controlled by a signal provided by the mobile communication terminal 300 (see Fig. 1) via said

I/O device (see page 3, lines 27-34). The method includes the following steps: transmitting identification data upon an interrogation by the external interrogating device (step 410; see page 6, lines 28-30), receiving an encrypted message from the external communication device (step 420; see page 6, lines 31-32), the message being encrypted with a public key associated with the identification data (see page 6, lines 32-33), decrypting said encrypted message using said private key, using the decrypted message as a shared key (step 440; see page 7, line 1) to encrypt further data communication between the SIM 100 and the external interrogating device (step 450; see page 7, lines 2-3).

The summary to the claimed invention herein is being made to comply with the Patent Office rules in submitting Briefs and is not to be considered as limiting the claimed invention.

VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

The Final Office Action provides one (1) ground of rejection for review on appeal. Claims 1-19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Hussmann* (U.S. Patent Publication No. 2003/0218532 A1)[hereinafter "*Hussmann*"] in view of *Ritter* (U.S. Patent No. 2,293,393 A1)[hereinafter "*Ritter*"].

More specifically, whether claims 1 and 18, the sole independent claims on appeal, are patentable over *Hussmann* in view of *Ritter*.

Each of independent claims 1 and 18 are grouped separately and do not stand or fall together. Dependent claims 2-17 are grouped with base claim 1 and stand or fall together with claim 1 and dependent claim 19 is grouped with base claim 18 and stands or falls together with claim 18.

VII. ARGUMENTS

Although independent claims 1 and 18 do not stand or fall together, the below discussion pertains to both claims 1 and 18, in that each of the discussed features are present in both claims, and therefore the discussion has not been duplicated for each claim. Furthermore, both claims 1

and 18 have been rejected under *Husmann*. and *Ritter*, without the inclusion of additional references.

To establish a *prima facie* case of obviousness, the prior art reference (or references when combined) **must teach or suggest all the claim limitations.**¹ Additionally, there must be a reason why one of ordinary skill in the art would modify the reference or combine reference teachings to obtain the invention. A patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art.² There must be a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does.³ The Supreme Court of the United States has recently held that the "teaching, suggestion, motivation test" is a valid test for obviousness, albeit one which cannot be too rigidly applied.⁴ **Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.**⁵

Another requirement to establish *prima facie case* of obviousness is that there must be a suggestion or motivation within the cited reference(s) to modify the reference(s) as proposed in the Office Action.⁶ The cited reference must be considered in its entirety including disclosures that **teach away** from the claimed invention.⁷ **If the cited reference(s) teach away from the claimed invention, then the combination is improper and the rejection must fail.**

Appellant repeatedly asserted, as evidenced in the Amendments submitted on December 9, 2009 and May 18, 2010 that the cited prior art (either alone or in combination): (1) fails to teach or suggest all the claim limitations and therefore an obviousness rejection cannot be substantiated; (2) expressly teaches away from the claimed invention; and (3) does not contain any motivation to combine the cited references.

¹ *In re Vaack*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

² *KSR Int'l Co. v. Teleflex Inc.*, 82 USPQ2d 1385 (U.S. 2007).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ See M.P.E.P. 2143.01.

⁷ See M.P.E.P. 2141.02.

A. The cited art does not teach an antenna included in the SIM

As alluded to above, Appellant repeatedly asserted that the cited prior art fails to teach or suggest that an antenna is included in the SIM card, as recited in either independent claims 1 and 18.

In rejecting independent claims 1 and 18, the Examiner alleges that the claims are obvious over *Hussmann*. in view of *Ritter* simply by alleging that *Hussmann* “does not exclude” that teaching.

The Examiner acknowledges that *Hussmann* fails to teach or suggest that the wireless communication device is operatively controllable by said processing device and arranged to be operatively enabled or disabled, controlled by a signal provided by the mobile communication terminal via said I/O device. Thus, the Examiner imports *Ritter* to fulfill the above-noted deficiency of *Hussmann*. Although Appellant does not necessarily agree with the Examiner that *Ritter* fulfills the above-acknowledged deficiency of *Hussmann*, it is respectfully submitted that neither *Hussmann* nor *Ritter*, alone or in combination, teaches or suggests a wireless communication device that is connected to an antenna included in a subscriber identity module as recited in claims 1 and 18.

As illustrated in Fig. 1, *Hussmann* discloses a general concept of RFID (radio frequency identification) transponders. In the system described with reference to Fig 1, there is no indication whatsoever of a SIM, or a mobile communication terminal. Thus, Fig. 1 and its corresponding description are evidently not relevant.

In *Hussmann's* embodiment illustrated in Fig. 2, a GSM mobile telephone 201 which includes a SIM is shown. The SIM is accessible for the CPU of the telephone. (See paragraph [0034].) The mobile telephone also includes an interface 204 between the telephone's CPU and a memory unit 203 of an RFID transponder 202 which is *integrated in the telephone*. (See paragraph [0035].)

The embodiments illustrated in Figs. 3a-3c appear to show similar structural features as demonstrated above.

Husmann is distinguished from the claimed invention in that nowhere does *Husmann* teach or suggest that an antenna is included in the SIM. On the contrary, *Husmann's* RFID transponder is clearly illustrated in Figs. 2 and 3a as being arranged separately from the SIM. (*Emphasis added.*)

Moreover, since paragraph [0035] reads "*an RFID transponder 202 integrated into the telephone*", and paragraph [0034] reads "*a detachable subscriber unit, is inserted into the phone*", it is evident that *Husmann* merely teaches arranging the transponder separately from the SIM.

Although Appellant recognizes that Examiners give claims their broadest reasonable interpretation in light of the supporting disclosure during prosecution (as specified, for example, in MPEP §2106), this guideline for examination does not permit disregarding words/limitations in the claims. In other words, "all words in a claim must be considered in judging the patentability of that claim against the prior art."⁸

Therefore, the Examiner once again failed to meet his burden in order to substantiate an obviousness rejection because *Husmann* does not teach all of the claim limitations, e.g., that an antenna is included in the SIM.

Thus, it is respectfully submitted that *Husmann* fails to teach or suggest a wireless communication device that is connected to an antenna included in a subscriber identity module.

Ritter has not been, and indeed cannot be, relied upon to fulfill the above-noted deficiency of *Husmann*.

Ritter merely teaches that a communication controller and independent power storage can be integrated in the chip card, but there is no teaching about also including the antenna in the chip card. Instead, *Ritter* teaches that the antenna is integrated at the back of the housing of the mobile apparatus. (*See page 5, lines 16-17; page 7, lines 12-13.*) Thus, it is evident that *Ritter* does not teach an antenna included in the SIM.

⁸ see MPEP §2143.03, citing *In re Wilson*, 424 F.2d 1382, 1385, 165, USPQ 494, 496 (CCPA 1970).

Indeed, the Examiner states, "*Ritter* teaches the SIM card controls the activation of the wireless transponder via a signal through contact region (page 8, lines 8-21). Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to have operatively controllable by said processing device and arranged to be operatively enabled or disabled, and controlled by a signal provided by the mobile communication terminal via said I/O device because it provides more flexibility in operating the system" (*see page 4, second full paragraph of the final Office Action.*) Appellant respectfully disagrees for the following reasons.

Ritter teaches that a transceiver in a mobile apparatus may be controlled by a communication controller integrated in the chip card. For example, in Fig. 2, the transceiver 15 is illustrated as being part of the mobile apparatus 1. *Ritter* discloses in page 8, lines 10-12, as follows: "a communication controller 21 for the...transceiver 14/15 is integrated in the chip card 2 instead of in the mobile apparatus 1." Further, *Ritter* discloses in page 8, lines 12-14 as follows: "The communication controller may... activate the transceiver 14/15 directly, ... via a contact region."

However, this is *contrary* to the claimed invention. *Ritter* does not disclose a transponder *in* the SIM controlled by a signal provided *by the mobile communication terminal*. In other words, in *Ritter* the infrared or inductive/electromagnetic transceiver is not on the card. Thus, communication device connected to an antenna included in the SIM.

Therefore, it is respectfully submitted that *Ritter* fails to teach or suggest a wireless communication device that is connected to *an antenna included in a subscriber identity module*.

B. Hussmann and Ritter teach away from the possibility of having an interrogatable transponder in the SIM.

More specifically, notwithstanding Section A, above, it is respectfully submitted that *Hussmann* and *Ritter* teach away from the possibility of having an interrogatable transponder in the SIM.

Hussmann relates to a system where user-specific information is written to the memory of an RFID transponder **included in the mobile device**. For example, *Hussmann* discloses as follows:

"...the invention more specifically relates to a portable electronic device comprising a transponder with a memory unit. The device is characterised by means for writing user-specific information into the transponder memory unit, so that the transponder, upon receiving an interrogating signal, generates a response signal comprising the user-specific information." (See paragraph [0009].)

"...the invention relates to a method for use in an interrogating apparatus for authenticating a user, who is carrying a **portable, electronic device, comprising a transponder with a memory unit**...said user-specific information being written, by means in the portable, electronic device, into a memory unit of the transponder..." (See paragraph [0017].) (*Emphasis added.*)

"a portable, electronic device, comprising a transponder with a memory unit said user-specific information being written, by means in the portable, electronic device, into a memory unit of the transponder..." (See paragraph [0021].) (*Emphasis added.*)

"...the telephone comprises an interface 204 between the CPU and the **memory unit 203 of an RFID transponder 202 integrated into the telephone**. This interface allows the telephone CPU to write user-specific information into the transponder memory unit 203 in the transponder IC." (See paragraph [0035].) (*Emphasis added.*)

"An RFID-transponder is then **mounted in the PDA**, and the PDA provides the transponder IC with user-specific information..." (See paragraph [0049].) (*Emphasis added.*)

The purpose of writing the user-specific information to the memory of an RFID transponder is that the user-specific information should not follow the device holding the RFID transponder if the device changes hands. This is mentioned in:

"In such a device the RFID-functionality is not statically tied to the device itself, but rather to the user of the device. This eliminates the problem associated with portable, electronic devices changing hands as described above." (See paragraph [0010].)

"A problem with using such devices in this manner is that they are sometimes stolen, lost, sold or given away. Any access right or user registration given to the associated RFID transponder identity is then inherited by the new possessor of the device. This implies a lack of security, since the device may be misused, and makes portable, electronic devices with RFID-transponders less credible." (See paragraph [0007].)

Because the RFID transponder has no user-specific information by default, one needs to retrieve that information from somewhere. According to *Husmann*, the user-specific information is retrieved by the device (or more specifically, by a CPU of the device) from a detachable unit, which can either be a SIM for a mobile phone or a memory card for a PDA. This is disclosed in:

"Preferably, a portable, electronic device may comprise a detachable subscriber unit from which the user-specific information is retrieved." (See paragraph [0011].)

"The SIM-module contains user-specific data and is accessible for the CPU (CPU=Central Processing Unit) of the telephone." (See paragraph [0034].) (*Emphasis added.*)

"...the PDA provides the transponder IC with user-specific information, which may be stored in the PDA or in a memory card inserted into the PDA." (See paragraph [0049].) (*Emphasis added.*)

The examiner argues that "*Husmann does not exclude the teaching that the RFID transponder cannot be attached to a SIM card in a mobile device.*" (See page 2, section 3 of the final Office Action.)

Appellant, however, respectively submits that *Husmann* indeed does exclude that teaching. Although *Husmann* discloses in paragraph [0010] that "RFID-functionality is not statically tied to the device itself", *Husmann* does not disclose any portable, electronic device without an RFID transponder. Neither does *Husmann* disclose any motivation to place the RFID transponder elsewhere than in the device. Neither does *Husmann* specifically disclose a SIM with an RFID transponder. Neither is there any teaching in *Husmann* about the CPU reading the user-specific information from the SIM in order to write it to an RFID transponder in the SIM. Neither does *Husmann* disclose any motivation to place the CPU that does this work elsewhere than in the device itself. Neither does *Husmann* disclose placing that CPU specifically in the SIM. Neither does *Husmann* disclose the SIM reading the user-specific information and writing it to an RFID transponder in the SIM.

Husmann is clearly devicecentric, and therefore teaches away from the possibility where an RFID transponder is integrated in the SIM. There is therefore no support in *Husmann*

for a "Subscriber identity module ... comprising ... *a wireless communication device which is connected to an antenna included in said subscriber identity module.*"

The teachings of *Ritter* cannot fulfill the above-noted deficiency of *Hussmann*. As mentioned earlier, *Ritter* teaches that a communication controller and independent power storage can be integrated in the chip card, but there is no teaching about also including the antenna in the chip card. Instead, *Ritter* teaches that the antenna is integrated at the back of the housing of the mobile apparatus. For example, *Ritter* discloses on page 5, lines 16-17 that the mobile apparatus has a housing 18. *Ritter* further discloses on page 7, lines 12-13 that the mobile apparatus in one modification contains another two-way interface, in this case an antenna 15 integrated at the back of the housing 18.

Because a skilled person, being a researcher with RFID skills and working for a telecom operator, and being challenged with the problem of how to communicate with mobile terminals via RFID, under the constraint that the solution should be applicable to standard mobile terminals for maximum market penetration, and under the further constraint that the solution should not require separate RFID accessories, would not consult *Hussmann* nor *Ritter* because both documents cover a limited set of terminals: namely those with contactless interfaces integrated in the terminals or at the back of their housings.

The claimed invention enables any standard terminal with a SIM slot, even those terminals without integrated RFID antennas, to communicate over RFID. The invention does not require special RFID accessories, such as terminal housings with RFID tags, or extension modules with RFID tags. The invention is not limited to portable or mobile devices. (*Hussmann* mentions portable electronic devices, *Ritter* mentions mobile devices).

At least in view of the above, Appellant respectfully submits that *Hussmann* and *Ritter* teach away from the possibility of having an interrogatable transponder in the SIM.

C. *Ritter teaches away from "operatively enabled or disabled, controlled by a signal provided by the mobile communication terminal"*

Appellant also submits Ritter teaches away from “operatively enabled or disabled, controlled by a signal provided by the mobile communication terminal” as recited in independent claims 1 and 18. Ritter discloses at page 8 and Fig. 2 that the embodiments therein are for the communication controller that is to be able to operate independently from the GSM controller (SIM) or the power source of mobile communication terminal. Thus, it is respectfully submitted that Ritter teaches away from “operatively enabled or disabled, controlled by a signal provided by the mobile communication terminal” as recited in independent claims 1 and 18.

D. Why it is beneficial to embed an antenna and an RFID into the same SIM card

The claimed invention enables any standard terminal with a SIM slot, even those terminals without integrated RFID antennas, to communicate over RFID. The invention does not require special RFID accessories, such as terminal housings with RFID tags, or extension modules with RFID tags. The invention is not limited to portable or mobile devices. (*Hussmann* mentions portable electronic devices, *Ritter* mentions mobile devices).

E. Teaching references Duhs and Haugli are irrelevant to the claimed invention

The examiner argues that "*Duhs...teaches that the RFID transponder can be integrated with battery pack, master board, SIM card or microchip (Figures 3a-3c and Page 10)... Therefore, Hussmann teaches antenna is included in said subscriber identity module.*" Although *Duhs* does teach that there may be an antenna integrated in a SIM card, this is irrelevant because both *Hussmann* and *Ritter* clearly teach away from the possibility of including the antenna in the SIM.

Appellant note that the Norwegian priority document, Application NO-20041347, was originally filed in English. Accordingly, Appellant hereby perfects the priority date of March 31, 2004. Accordingly, *Haugli* is irrelevant because the priority date of *Haugli* is 2 Sep 2004, while the priority date of this patent application is 31 Mar 2004.

Therefore, for at least the reasons stated above in Sections A–E, Appellant respectfully submits that the asserted combination of *Husmann* and *Ritter* (assuming these references may be combined, which Appellant does not admit) fails to establish *prima facie* obviousness of independent claims 1 and 18 or any claim depending therefrom.

VIII. CLAIMS

A copy of the claims involved in the present appeal is attached hereto as Appendix A.

IX. EVIDENCE

There is no additional evidence pursuant to §§ 1.130, 1.131, or 1.132 and/or evidence entered by or relied upon by the examiner that is relevant to this appeal as noted in Appendix B.

X. RELATED PROCEEDINGS

No related proceedings are referenced in II. above, and thus, copies of decisions in related proceedings are not provided.

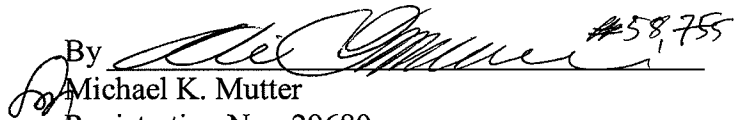
XI. CONCLUSION

The withdrawal of the outstanding rejections and the allowance of claims 1-19 are earnestly solicited.

If necessary, the Director is hereby authorized in this, concurrent, and future replies to charge any fees required during the pendency of the above-identified application or credit any overpayment to Deposit Account No. 02-2448.

Dated: August 2, 2010

Respectfully submitted,

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APPENDIX A**Claims Involved in the Appeal of Application No. 10/594,559**

1. (Previously Presented) Subscriber identity module for a mobile communication terminal, comprising a processing device, a memory device, an I/O device and a wireless communication device which is connected to an antenna included in said subscriber identity module,

wherein said wireless communication device is an interrogatable transponder, operatively controllable by said processing device and arranged to be operatively enabled or disabled, controlled by a signal provided by the mobile communication terminal via said I/O device.

2. (Original) Subscriber identity module according to claim 1, wherein said signal is provided by a user interface in the mobile terminal.

3. (Original) Subscriber identity module according to claim 1, wherein said signal is provided by a mobile communication operator.

4. (Original) Subscriber identity module according to claim 1, wherein said interrogatable transponder comprises identification data contained in a memory, said identification data being configurable by said processing device.

5. (Original) Subscriber identity module according to claim 4, wherein said identification data is provided by the mobile communication terminal via said I/O device.

6. (Original) Subscriber identity module according to claim 5, wherein said identification data is provided by a mobile communication operator.

7. (Original) Subscriber identity module according to claim 1, wherein said interrogatable transponder is arranged to transmit a RF signal coded with said identification data when interrogated by an external interrogating RF device.

8. (Original) Subscriber identity module according to one of the claims 1-7, wherein said transponder is an active RFID transponder.

9. (Original) Subscriber identity module according to claim 8, wherein said transponder is a separate device, comprising a processing device, a memory device and an I/O device connected to an antenna.

10. (Original) Subscriber identity module according to claim 9, wherein said transponder comprises an antenna, and wherein further RFID transponder functionality is implemented by means of the processing device and the memory device included in said subscriber identity module.

11. (Previously Presented) Subscriber identity module according to claim 1, wherein said subscriber identity module is used as an authentication token.

12. (Previously Presented) Subscriber identity module according to claim 1, wherein said subscriber identity module is used as an authentication token for an access control system.

13. (Previously Presented) Subscriber identity module according to claim 1, wherein said subscriber identity module is used as an authentication token for a mobile commerce system.

14. (Previously Presented) Mobile communication terminal, comprising a subscriber identity module according to claim 1.

15. (Previously Presented) Mobile communication terminal, comprising a subscriber identity module according to claim 1, wherein said mobile communication terminal is used as an authentication token.

16. (Previously Presented) Mobile communication terminal, comprising a subscriber identity module according to claim 1, wherein said mobile communication terminal is used as an authentication token for an access control system.

17. (Previously Presented) Mobile communication terminal, comprising a subscriber identity module according to claim 1, wherein said mobile communication terminal is used as an authentication token for a mobile commerce system.

18. (Original) Method for execution by a subscriber identity module, for the purpose of providing secure data communication between the subscriber identity module and an external interrogating device, said subscriber identity module comprising a processing device, a memory device containing a private key, an I/O device, and a wireless communication device which is connected to an antenna included in said subscriber identity module, the wireless communication device being an interrogatable transponder, operatively controllable by said processing device and arranged to be operatively enabled or disabled, controlled by a signal provided by the mobile communication terminal via said I/O device,

said method comprising the steps of

- transmitting identification data upon an interrogation by the external interrogating device,

- receiving an encrypted message from the external communication device, said message being encrypted with a public key associated with said identification data,
- decrypting said encrypted message using said private key,
- using the decrypted message as a shared key to encrypt further data communication between the subscriber identity module and the external interrogating device.

19. (Original) Method according to claim 18, wherein said public key is provided by said external interrogating device by searching a database in order to match said identification with the corresponding public key.

APPENDIX B

There is no additional evidence pursuant to §§ 1.130, 1.131, or 1.132 and/or evidence entered by or relied upon by the examiner that is relevant to this appeal.

APPENDIX C

There are no related proceedings.